

otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203-3507, (703) 358-2104.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the flat-tailed horned lizard;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat for the flat-tailed horned lizard as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population density of the flat-tailed horned lizard; and

(4) Current or planned activities in the subject area and their possible impacts on the flat-tailed horned lizard.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Fish and Wildlife Service (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 48244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request (see ADDRESSES section).

Authors

The primary authors of this proposed rule are Jim Rorabaugh and Judy

Hohman, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (805/644-1766); and Karla Kramer, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Street, Portland, Oregon, 97232 (503/231-6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

Part 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following in alphabetical order under "Reptiles" to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•		•	•	•
Reptiles							
•	•	•	•		•	•	•
Lizard, flat-tailed horned.	<i>Phrynosoma mcallii</i>	U.S.A. (CA, AZ), Mexico.	Entire	T	NA	NA
•	•	•	•		•	•	•

Dated: November 8, 1993.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
 [FR Doc. 93-29102 Filed 11-26-93; 8:45 am]
 BILLING CODE 4310-55-P

50 CFR Part 17

RIN 1018-AC14

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Plant *Eryngium constancei* (Loch Lomond Coyote-thistle) From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to reclassify *Eryngium constancei* (Loch Lomond coyote-thistle) from endangered to threatened status. This action is proposed due to substantial improvement in the status of this species. The only known location of this plant is now owned by the California Department of Fish and Game and, therefore, its habitat is largely protected from dredging and off-road vehicle traffic, the primary threats that

prompted emergency listing of the species in 1985. The plant is still threatened by occasional fence vandalism and vehicle trespass, logging and development within the lake watershed, and the risk of extirpation of the single population by chance events. This rule is proposed under the Endangered Species Act of 1973, as amended (Act), and is based on a thorough review of all available data. The proposed change in classification reflects an improvement in status and will not significantly alter the protection of this species under the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 28, 1994. Public hearing requests must be received by January 13, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jan Knight (see ADDRESSES section) at 916/978-4866.

SUPPLEMENTARY INFORMATION:

Background

Eryngium constancei (Loch Lomond coyote-thistle), a perennial herb of the parsley family (Apiaceae), annually produces slender, weak scapes (leafless flowering stalks) up to 30 centimeters (cm) (12 inches (in)) in height from its over-wintering rootstock (Sheikh 1983). The basal leaves, divided by septa (internal partitions), range from 10 to 20 cm (4 to 8 in) in length. Slender petioles, 8 to 12 cm (3 to 5 in) in length and usually longer than the leaf blade, bear diminutive spines. A dense "down" of minute hairs, unique to *E. constancei*, covers the leaves and especially the scapes. This character and the species' sparse flowers distinguish *E. constancei* from its closest relative, *E. aristulatum* var. *aristulatum*, and all other species of western North American *Eryngium* (Sheikh 1983).

Eryngium constancei was first collected by Robert Hoover in 1941 from the vernal lake near the community of Loch Lomond in southern Lake County, California. M. Yusuf Sheikh and Lincoln Constance recollected the plant in 1973. Later Sheikh (1983) described *E. constancei* along with two other *Eryngium* taxa. Sheikh, as part of his

doctoral study completed in 1978, intensively searched for and failed to discover additional populations of the plant at other localities. Subsequent searches made in 1984 by two botanists employed by the State of California did not reveal any new populations of the plant.

In 1984, the owner of the species' habitat dredged and filled about 15 percent of the lakebed, and planned similar action for the rest of the lake. At that time, *E. constancei* habitat was also threatened by off-road vehicles and hikers, highway maintenance, and trash dumping. The Service was also concerned that an existing ditch that emptied into Cole Creek from the center of the lake might allow the escape of water needed to maintain high habitat quality.

The portion of the lakebed dredged and filled in 1984 was graded and reseeded with *Eryngium constancei* in late 1985. By 1992 *E. constancei* was firmly reestablished in this area (Ann Howald, California Department of Fish and Game, pers. comm., 1992). The 3-hectare (ha) (7-acre) vernal lake and an additional 0.4 ha (1 acre) of land surrounding the lake were purchased by the California Department of Fish and Game (CDFG) in 1988. A split-rail fence was constructed in 1989 with funds provided by the Service through section 6 of the Act. Vandals removed some rails from the fence in 1992, allowing motorcycle access to the lake. The fence was repaired later in the same year, and the rails were wired to the fenceposts to discourage further vandalism.

The Service published an emergency rule listing *E. constancei* an endangered species on August 1, 1985 (50 FR 31187). On March 26, 1986, the Service proposed *E. constancei* as an endangered species (51 FR 10412) prior to the expiration of the emergency rule on March 29, 1986. The Service determined *E. constancei* to be endangered with the publication of a final rule on December 23, 1986 (51 FR 45904).

Summary of Factors Affecting the Species

The Service proposes to reclassify *Eryngium constancei* from endangered to threatened status. Section 4 of the Endangered Species Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) require that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Eryngium constancei* Sheikh (Loch Lomond coyote-thistle) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The predominant threat facing *Eryngium constancei* at the time it was listed as endangered was the landowner's plan to dredge and fill the lake. This threat has been removed by the purchase of the property by CDFG. The fencing around the lake has greatly reduced the incidence of off-road vehicle and pedestrian use of the lakebed. The fencing is not likely to be completely successful in excluding off-road vehicle users, however, given the proximity of the lakebed to vacation homes and recreation areas, the convenience of its location immediately adjacent to the highway, and the appeal of the open lakebed, which is unusual in the heavily forested region.

At the time of listing, highway maintenance presented an occasional threat to *Eryngium constancei* habitat. This threat has been diminished by the listing of the species. Because the California Department of Transportation uses funds from the Federal Highways Administration, any roadwork that might affect the plant likely would require consultation under section 7 of the Act.

No appreciable amount of trash has been dumped in the lakebed since the fence was built (Allan Buckman, CDFG, pers. comm., 1992), but given the proximity of the site to the highway, trash dumping could occur in the future. However, the amount of dumping likely to occur does not constitute a substantial threat to the survival and recovery of *Eryngium constancei*.

The manmade ditch running from the center of the lake to Cole Creek in the north decreases the water holding capacity of the lake. This channel could be blocked to increase the storage capacity of the lake. However, casual observations suggest that the population has remained stable, and such management actions have not been thought to be necessary (Allan Buckman, pers. comm., 1992).

Another threat to *Eryngium constancei* habitat is development on watershed lands to the west and south of the lake. Changes in drainage patterns caused by development could reduce the flow of water or increase the amount of sediment carried into the lake, either of which would have detrimental effects on the plant habitat. One project has been approved for construction within the watershed south of the lake. This project includes a mini-storage unit immediately to the south and southwest of the lake, and commercial storage units further south. The project has been

approved on condition that runoff from the site be directed away from the lake (Mark Phillips, Lake County Planning Department, pers. comm., 1992), as recommended by CDFG. Construction of the storage unit in accordance with permit conditions will eliminate the threat from runoff from this project. Operation of the facility is likely, however, to increase the threats to *Eryngium constancei* from pedestrian traffic and trash dumping.

A parcel immediately to the west of the lake was logged within the past 5 years. A shelterwood cut, in which tractors were used to remove the largest trees in the stand, was conducted on 135 ha (335 acres). The removal of trees and the disturbance caused by logging can increase erosion. Increased erosion likely would result in increased sediment deposition in the lake. The Service has no information regarding the changes in erosion and deposition due to the logging activity, or what effect further removal of tree cover might have on the vernal lake. At the request of CDFG, logging roads constructed on this parcel were designed to direct the flow of water away from the lake to avoid the deposition of sediment from the road surfaces (Allan Buckman, pers. comm., 1992).

CDFG would like to acquire the property west of the lake, but funding has not been available and is not likely to be forthcoming in the near future. Logging and development in the watershed will, therefore, continue to pose a threat to the vernal lake. This threat is reduced but not eliminated by CDFG's review of proposed activity in the area.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Loch Lomond lakebed is visited by botanists and students but there is no evidence of overutilization of *Eryngium constancei*. The site is difficult for CDFG personnel to patrol regularly because of its distance from Department headquarters in Yountville, a town in a more urbanized area of the county 80 kilometers (km) (50 miles) away. For these reasons, vandalism and inappropriate use of the area are likely to occur occasionally. However, the present level of disturbance does not constitute a substantial threat to the survival and recovery of the species.

C. Disease or Predation

No Diseases or predators are known to affect *Eryngium constancei*. Livestock grazing is prevented by the fence.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (Chapter 10 sec. 1900 *et seq.* of the Fish and Game Code) and California Endangered Species Act (Chapter 1.5 sec. 2050 *et seq.*), the California Fish and Game Commission has listed *Eryngium constancei* as endangered. Both statutes prohibit the "take" of State-listed plants (Chapter 10 sec. 1908 and Chapter 1.5 sec. 2080). The one known location of *E. constancei* was purchased and is managed by CDFG to protect the plant and its habitat. If the proposed reclassification to threatened status becomes final, little change in the protection afforded this species under these regulatory mechanisms is anticipated. Existing regulatory mechanisms determined necessary to protect this species will remain in effect.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

A landowner on the east side of State Route 175 periodically empties his swimming pool into a roadside ditch that delivers water into the western roadside ditch via a culvert under the road. The berm between the western ditch and the lake is 5 meters (15 feet) wide in some places, but only 1 meter (3 feet) wide in others (Ann Howald, pers. comm., 1992). It may be possible for water to breach or soak through the berm into the lake. Influx of water in late summer could cause regrowth of plants or germination of seeds that might not survive until the fall rains. In 1992, the water was released in late September, and did not enter the lake, but remained in the roadside ditch (Allan Buckman, pers. comm., 1992). Given current conditions, the emptying of this pool does not appear to be a threat to the plant. Regular monitoring of the ditch and berm system by CDFG would reveal any decline in its status, and would prevent an increase in threat from this source.

The greatest danger to the species at this time is its occurrence as a single population. The limited distribution of this plant means that a single local catastrophe (such as fire, flood, severe drought, or a pest or disease outbreak), or a combination of several such events, could destroy all the individuals of the species. Catastrophic events have destroyed populations of other rare plants. For example, a localized flood eliminated an entire population of *Oenothera organensis*, a rare plant endemic to riparian canyons in southern New Mexico (Katie Skaggs, The Nature Conservancy, pers. comm., 1992).

A local catastrophe is more likely to reduce the size of the *Eryngium constancei* population and the vigor of the individual plants than to completely eliminate the population. A decrease in population size increases the risk of extirpation due to genetic problems associated with small populations (Barrett and Kohn 1991, Menges 1991). Less vigorous plants are more susceptible to succeeding threats. A prolonged drought, for instance, may lower the resistance of plants to attacking pests.

The threats to plant populations of chance events such as fire, flood, drought, pest or disease outbreaks, or a combination of these factors, are serious and ever present. These events are usually restricted to a local area, smaller than the entire range of a plant species, and affect only one or a few populations of any given species. For most species, the loss of a single population presents no threat to the species as a whole. For *Eryngium constancei*, however, the loss of a single population would mean the extinction of the species.

In reviewing the progress toward recovery since listing, the Service concludes that *Eryngium constancei* is no longer in imminent danger of extinction. The purchase of the lake by CDFG has removed the greatest immediate threat to the plant, the proposed dredging and filling of the vernal lake. The fencing of the lake has greatly reduced the threat of habitat and plant destruction through off-road vehicle use of the lakebed. The plant appears to have recovered from the 1984 dredging action and from the extended off-road vehicle use of the lakebed. However, due to the continued though presently minor threats from off-road vehicles and hikers, highway maintenance, and watershed development, and the more serious threat presented by the occurrence of the species in a single population, the Service finds that the species continues to need the protection afforded by the Act and could become endangered. Based on a careful assessment of the best scientific and commercial information available regarding past, present, and future threats faced by this species, the preferred action is therefore to reclassify *Eryngium constancei* from endangered to threatened status. For reasons discussed under the Critical Habitat section, critical habitat is not being proposed for this species.

Critical Habitat

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is

determined to be endangered or threatened. At the time of listing of *Eryngium constancei*, the Service found that determination of critical habitat was not prudent for this species. The reasons given for that decision still apply. Discussion of the status of the plant publicizes its rarity and can make the plant attractive to collectors of rare plants, researchers, and vandals. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this herb even more vulnerable and could contribute to the decline of the species. Furthermore, critical habitat designation is not prudent due to lack of benefit to the species. The only known population of *E. constancei* is confined to Loch Lomond. Because *E. constancei* has always been restricted to the single population at Loch Lomond, actions that would appreciably diminish the value of Loch Lomond for the survival and recovery of the species would also jeopardize the continued existence of this highly restricted plant. No areas outside of Loch Lomond are known to have supported this plant in the past; therefore, no additional sites exist that could be considered integral to the species' recovery. For these reasons, the Service finds that designation of critical habitat is not prudent because it would provide no additional benefit to the species beyond those it would receive by virtue of its designation as a threatened species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Some recovery actions, such as purchase and fencing of the habitat, have been completed already for this species. Further recovery actions, such as ecological studies of the species, may be carried out by Federal or State agencies or interested groups or individuals. The protection required of Federal agencies and the prohibition against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its

critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only Federal activity potentially impacting *Eryngium constancei* is the funding by the Federal Highway Administration of maintenance or construction activities for State Route 175. Because the habitat is now owned and managed by CDFG, no applications to the U.S. Army Corps of Engineers for dredge and/or fill permits are anticipated.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds of cultivated specimens of threatened plant species are exempt from these provisions, provided that a statement that the seeds are of "cultivated origin" accompanies the seeds or their container during the course of any activity otherwise subject to these provisions. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. International and interstate trade in *Eryngium constancei* is not known to exist. The Service anticipates few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room

432, Arlington, Virginia 22203-3507 (703/358-2104).

The proposed action would change the status of *Eryngium constancei* from endangered to threatened in recognition of the relative security of this species, which is no longer in imminent danger of extinction throughout its range. This proposed change in classification does not substantially alter the protection for this species under the Act. Federal agencies still would be required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *Eryngium constancei*. Federal prohibitions under section 9 of the Act still would apply.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or lack thereof) to *Eryngium constancei*;

(2) The location of any additional populations of this species; and the reasons why any habitat should or should not be designated as critical habitat as provided by section 4 of the Act; and

(3) Current or planned activities in the subject area and their possible impacts on this species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Office (see ADDRESSES section).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination

was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

- Barrett, S.C.H., and J.R. Kohn. 1991. Genetic and evolutionary consequences of small population size in plants: Implications for conservation. In: Falk, D.A., and K.E. Holsinger, eds. *Genetics and Conservation of Rare Plants*. Center for Plant Conservation. Oxford University Press. pp. 45-61.
- Menges, E.S. 1990. Population viability analysis for an endangered plant. *Conservation Biology* 4(1):52-62.
- Menges, E.S. 1991. The application of minimum viable population theory to plants. In: Falk, D.A., and K.E. Holsinger, eds. *Genetics and Conservation of Rare Plants*. Center for Plant Conservation. Oxford University Press. pp. 45-61.
- Sheikh, M.Y. 1983. New taxa of western North American *Eryngium* (Umbelliferae). *Madroño* 30:93-101.

Author

The primary author of this proposed rule is Jeanine Hardison (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17 subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

§ 17.12(h) [Amended]

2. Section 17.12(h) for plants is amended by revising the entry under "Apiaceae—Parsley family" for *Eryngium constancei* to read "T" under "Status."

Dated: November 3, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-29103 Filed 11-26-93; 8:45 am]

BILLING CODE 4310-55-P